

AMENDED IN SENATE APRIL 22, 2003

**SENATE BILL**

**No. 970**

**Introduced by Senator Ortiz**

February 21, 2003

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An act to add ~~Section 11113 to~~ Sections 11077.5 and 11077.6 to, and to amend Section 11077 of, the Penal Code, relating to fingerprinting criminal offender record information.

LEGISLATIVE COUNSEL'S DIGEST

SB 970, as amended, Ortiz. Fingerprinting.

*Existing law generally makes the Attorney General responsible for the security of criminal offender record information.*

*This bill would require the Attorney General to establish an electronic communication network to receive and direct requests for criminal offender record information and to facilitate the transmission of criminal offender record information for employment, licensing, certification, custodial child placement, or adoption purposes transmitted from nonlaw enforcement entities in California. The bill would require the Department of Justice to assess and collect an initial fee from any nongovernmental entity, authorized by the department, to facilitate connection to communication network. The fee would be sufficient to cover the costs associated with establishing a connection to the network. The bill would also require the department to assess and collect an annual maintenance fee from any nongovernmental entity that uses the communication network at any time during the calendar year. In addition, the bill would require, as of July 1, 2005, that the Department of Justice only accept criminal offender record information requests for employment, licensing, certification, custodial child*

*placement, or adoption purposes if it was transmitted electronically from a department approved entity, except as specified.*

~~Under existing law, certain parties are authorized to receive criminal history information from the Department of Justice for licensure, certification, or employment purposes, as specified. Existing law provides for the submission of fingerprints for these purposes, and provides for the certification of persons who roll fingerprints for these purposes, manually or electronically, by the department. Existing law provides for an automated system maintained by the department for retaining fingerprint data, and references “live read” fingerprint equipment that may connect to this system.~~

~~This bill would require the Attorney General to permit private, nonprofit contractors providing services that require employees undergo criminal background checks, if those contractors are subject to state or federal licensing and safety regulation, to operate “live read” fingerprinting equipment and to transmit fingerprint information to the department. This bill would authorize these contractors to operate this equipment on the same basis, and with the same training and other requirements, as government agencies. These contractors would be required to submit to whatever reasonable security requirements and audits the Attorney General may impose to assure proper use and security of the system.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 11113 is added to the Penal Code, to~~
- 2     ~~SECTION 1. Section 11077 of the Penal Code is amended to~~
- 3     ~~read:~~
- 4     ~~11077. The Attorney General is responsible for the security of~~
- 5     ~~criminal offender record information. To this end, he or she shall:~~
- 6     ~~(a) Establish regulations to assure the security of criminal~~
- 7     ~~offender record information from unauthorized disclosures at all~~
- 8     ~~levels of operation in this state.~~
- 9     ~~(b) Establish regulations to assure that such this information~~
- 10    ~~shall be is disseminated only in situations in which it is~~
- 11    ~~demonstrably required for the performance of an agency’s or~~
- 12    ~~official’s functions.~~

1 (c) Coordinate ~~such~~ these activities with those of any interstate  
2 systems for the exchange of criminal offender record information.

3 (d) Cause to be initiated for employees of all agencies that  
4 maintain, receive, or are eligible to maintain or receive, criminal  
5 offender record information a continuing educational program in  
6 the proper use and control of criminal offender record information.

7 (e) Establish ~~such~~ regulations as he or she finds appropriate to  
8 carry out his or her functions under this article.

9 SEC. 2. Section 11077.5 is added to the Penal Code, to read:

10 11077.5. (a) In addition to Section 11077, the Attorney  
11 General shall establish a communication network to receive and  
12 direct requests for criminal offender record information and to  
13 facilitate the transmission of criminal offender record information  
14 for employment, licensing, certification, custodial child  
15 placement, or adoption purposes transmitted from nonlaw  
16 enforcement entities in California. This communication network  
17 may connect any Department of Justice authorized entity directly  
18 to the department.

19 (b) Users of the communication network shall undergo initial  
20 and remedial training as determined by the Department of Justice.  
21 Failure or refusal to comply with the training requirement shall  
22 terminate the connection to the communication network until the  
23 training is completed. The scope of the training and the entities'  
24 level of participation shall be determined by the department.

25 (c) Users of the communication network shall comply with any  
26 policy, practice, procedure, or requirement deemed necessary by  
27 the Department of Justice to maintain network security and  
28 stability. Failure or refusal to do so shall terminate the connection  
29 to the communication network until the department determines  
30 that there is satisfactory compliance.

31 (d) Users of the communication network shall only use  
32 hardware and software in relation to or for connection to the  
33 communication network that is currently approved and certified by  
34 the National Institute of Standards and Technology, the Federal  
35 Bureau of Investigation, and the Department of Justice.

36 (e) The Department of Justice shall assess and collect an initial  
37 fee from any nongovernmental entity, authorized by the  
38 department pursuant to this section to facilitate connection to the  
39 communication network. The fee shall be sufficient to cover the  
40 costs associated with establishing a connection to the network. The

1 department shall also assess and collect an annual maintenance  
2 fee from any nongovernmental entity that uses the communication  
3 network at any time during the calendar year. The fee may not  
4 exceed the infrastructure and personnel costs incurred by the  
5 department for establishing and maintaining the communication  
6 network and the department shall review the fees annually to  
7 determine the appropriateness of the assessment.

8 (f) Users of the communication network shall be independently  
9 responsible for securing all hardware, software, and  
10 telecommunication service or linkage necessary to accomplish  
11 connection to the communication network, once they are  
12 authorized by the department.

13 (g) The communication network shall be implemented by July  
14 1, 2004.

15 SEC. 3. Section 11077.6 is added to the Penal Code, to read:

16 11077.6. (a) As of July 1, 2005, the Department of Justice  
17 shall only accept criminal offender record information requests for  
18 employment, licensing, certification, custodial child placement, or  
19 adoption purposes if it was transmitted electronically from a  
20 department approved entity. This section is intended to supercede  
21 any statutory or regulatory reference to the submission of hard  
22 fingerprint cards for these purposes, but shall not supercede the  
23 intended statutory authorization for the criminal offender record  
24 information request.

25 (b) Notwithstanding subdivision (a) at the discretion of the  
26 department, hard fingerprint cards may be accepted to process  
27 criminal offender record information requests for employment,  
28 licensing, certification, custodial child placement, or adoption  
29 purposes pursuant to Section 11105.7 or for similar identification  
30 circumstances.

31 read:

32 ~~11113. Notwithstanding any other provision of law, the~~  
33 ~~Attorney General shall permit private, nonprofit contractors~~  
34 ~~providing services that require employees undergo criminal~~  
35 ~~background checks, if those contractors are subject to state or~~  
36 ~~federal licensing and safety regulation, to operate "live read"~~  
37 ~~fingerprinting equipment and to transmit fingerprint information~~  
38 ~~to the department. These contractors shall be authorized to operate~~  
39 ~~this equipment on the same basis, and with the same training and~~  
40 ~~other requirements, as government agencies. These contractors~~

1 ~~shall submit to whatever reasonable security requirements and~~  
2 ~~audits the Attorney General may impose to assure proper use and~~  
3 ~~security of the system.~~

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